

**STATE OF INDIANA
Board of Tax Review**

In the matter of the Petition for Review)
of Assessment, Form 131) Petition No. : 65-017-95-1-3-00025

Parcel No. : 0020084700

Assessment Year: 1995

Petitioner: Indiana Farm Bureau/Countrymark Cooperative
 950 North Meridian, 8th Floor
 Indianapolis, IN 46204

Petitioner Representative: Michael F. Caron
 DuCharme, McMillen & Assoc., Inc.
 8275 Allison Pointe Trail, Suite 220
 Indianapolis, IN 46250

Findings of Fact and Conclusions of Law

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Issues

1. Whether the land base rate is correct.
2. Whether the land should receive an influence factor for shape and size.
3. Whether residence should have obsolescence.
4. Whether grade is correct.

Findings of Fact

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also if appropriate, any conclusion of law made herein shall also be considered a finding of fact.

2. Pursuant to Ind. Code § 6-1.1-15-3, Michael Caron of DuCharme, McMillen & Assoc., Inc., on behalf of Countrymark Cooperative (Petitioner), filed a Form 131 petition requesting a review by the State. The Form 131 was filed on October 21 1996. The Posey County Board of Review's (County Board) Assessment Determination is dated September 18, 1996.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on April 8, 1998, before Hearing Officer Dennis Neuhoff. Testimony and exhibits were received into evidence. Michael Caron represented the Petitioner. Rita Sherretz, County Assessor, represented the Posey County Board of Review. Margie Grabert represented Black Township. Ron Bennett, County Auditor, was also present at the hearing.

4. At the hearing, the subject Form 131 petition was made a part of the record and labeled Board Exhibit A. The Notice of Hearing was labeled Board Exhibit B. In addition, the following exhibits were submitted to the State:

Petitioner Exhibit 1 – Page from the Posey County land order.

5. The subject property is located at 1200 Refinery Road, Mt. Vernon, Indiana, Posey County, Black Township.

6. The Hearing Officer viewed the property on June 2, 1998, along with Mr. Mike Burdick who represented the Petitioner.

Issue No. 1 - Land base rate

Issue No. 2 - Influence factor for shape and size

7. At the hearing, Mr. Caron testified that in the land order, commercial/industrial land is priced from \$5,000 per acre to \$25,000 per acre. Of the various associated petitions, most are priced from the high end of the scale with no regard to economy of scale for the parcel size. In this case, the Petitioner requests either the lower base rate be applied, or a 50% influence factor be applied to the land due to size.

Issue No. 3 - Obsolescence

Issue No. 4 - Grade

8. No testimony was offered on these issues.

Conclusions of Law

1. The Petitioner is limited to the issues raised on the Form 130 petition filed with the Property Tax Assessment Board of Appeals (PTABOA) or issues that are raised as a result of the PTABOA's action on the Form 130 petition. 50 IAC 17-5-3. See also the Forms 130 and 131 petitions authorized under Ind. Code §§ 6-1.1-15-1, -2.1, and -4. In addition, Indiana courts have long recognized the principle of exhaustion of administrative remedies and have insisted that every designated administrative step of the review process be completed. *State v. Sproles*, 672 N.E. 2d 1353 (Ind. 1996); *County Board of Review of Assessments for Lake County v. Kranz* (1964), 224 Ind. 358, 66 N.E. 2d 896. Regarding the Form 130/131 process, the levels of review are clearly outlined by statute. First, the Form 130 petition is filed with the County and acted upon by the PTABOA. Ind. Code §§ 6-1.1-15-1 and -2.1. If the taxpayer, township assessor, or certain members of the PTABOA disagree with the PTABOA's decision on the Form 130, then a Form 131 petition may be filed with the State. Ind. Code § 6-1.1-15-3. Form 131 petitioners who raise new issues at the State level of appeal

circumvent review of the issues by the PTABOA and, thus, do not follow the prescribed statutory scheme required by the statutes and case law. Once an appeal is filed with the State, however, the State has the discretion to address issues not raised on the Form 131 petition. *Joyce Sportswear Co. v. State Board of Tax Commissioners*, 684 N.E. 2d 1189, 1191 (Ind. Tax 1997). In this appeal, such discretion will not be exercised and the Petitioner is limited to the issues raised on the Form 131 petition filed with the State.

2. The State is the proper body to hear an appeal of the action of the County pursuant to Ind. Code § 6-1.1-15-3.

A. Indiana's Property Tax System

3. Indiana's real estate property tax system is a mass assessment system. Like all other mass assessment systems, issues of time and cost preclude the use of assessment-quality evidence in every case.
4. The true tax value assessed against the property is not exclusively or necessarily identical to fair market value. *State Board of Tax Commissioners v. Town of St. John*, 702 N.E. 2d 1034, 1038 (Ind. 1998)(*Town of St. John V*).
5. The Property Taxation Clause of the Indiana Constitution, Ind. Const. Art. X, § 1 (a), requires the State to create a uniform, equal, and just system of assessment. The Clause does not create a personal, substantive right of uniformity and equality and does not require absolute and precise exactitude as to the uniformity and equality of each *individual* assessment. *Town of St. John V*, 702 N.E. 2d at 1039 – 40.
6. Individual taxpayers must have a reasonable opportunity to challenge their assessments. But the Property Taxation Clause does not mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant. *Id.* Rather, the proper inquiry in all tax appeals is “whether the system

prescribed by statute and regulations was properly applied to individual assessments.” *Id.* at 1040. Only evidence relevant to this inquiry is pertinent to the State’s decision.

B. Burden

7. Ind. Code § 6-1.1-15-3 requires the State to review the actions of the PTABOA, but does not require the State to review the initial assessment or undertake reassessment of the property. The State has the ability to decide the administrative appeal based upon the evidence presented and to limit its review to the issues the taxpayer presents. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113, 1118 (Ind. Tax 1998) (citing *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E. 2d 765, 769 (Ind. Tax 1997)).
8. In reviewing the actions of the PTABOA, the State is entitled to presume that its actions are correct. See 50 IAC 17-6-3. “Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies.” *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816, 820 (Ind. Tax 1995). The taxpayer must overcome that presumption of correctness to prevail in the appeal.
9. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128.
10. Taxpayers are expected to make factual presentations to the State regarding alleged errors in assessment. *Whitley*, 704 N.E. 2d at 1119. These presentations should both outline the alleged errors and support the allegations with evidence. “Allegations, unsupported by factual evidence, remain mere

allegations.” *Id* (citing *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d. 890, 893 (Ind. Tax 1995)). The State is not required to give weight to evidence that is not probative of the errors the taxpayer alleges. *Whitley*, 704 N.E. 2d at 1119 (citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).

11. One manner for the taxpayer to meet its burden in the State’s administrative proceedings is to: (1) identify properties that are similarly situated to the contested property, and (2) establish disparate treatment between the contested property and other similarly situated properties. *Zakutansky v. State Board of Tax Commissioners*, 691 N.E. 2d 1365, 1370 (Ind. Tax 1998). In this way, the taxpayer properly frames the inquiry as to “whether the system prescribed by statute and regulations was properly applied to individual assessments.” *Town of St. John V*, 702 N.E. 2d at 1040.
12. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer’s case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.
13. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence “sufficient to establish a given fact and which if not contradicted will remain sufficient.” *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).
14. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer’s evidence and justify its decision with substantial evidence. 2 Charles H. Koch, Jr. at §5.1; 73 C.J.S. at § 128. See *Whitley*, 704 N.E. 2d at 1119 (The substantial evidence requirement for a taxpayer challenging a State Board determination at the Tax Court level is not

“triggered” if the taxpayer does not present any probative evidence concerning the error raised. Accordingly, the Tax Court will not reverse the State’s final determination merely because the taxpayer demonstrates flaws in it).

C. Review of Assessments After *Town of St. John V*

15. Because true tax value is not necessarily identical to market value, any tax appeal that seeks a reduction in assessed value solely because the assessed value assigned to the property does not equal the property’s market value will fail.
16. Although the Courts have declared the cost tables and certain subjective elements of the State’s regulations constitutionally infirm, the assessment and appeals process continue under the existing rules until a new property tax system is operative. *Town of St. John V*, 702 N.E. 2d at 1043; *Whitley*, 704 N.E. 2d at 1121.
17. *Town of St. John V* does not permit individuals to base individual claims about their individual properties on the equality and uniformity provisions of the Indiana Constitution. *Town of St. John*, 702 N.E. 2d at 1040.

Issue No. 1 - Land base rate

18. Upon review, the subject property is priced within the Posey County land order.
19. Land valuation – through land order – is the one part of Indiana’s assessment system that actually approximates fair market valuation through use of sales data.
20. The Tax Court has consistently held that taxpayers must follow the required appeals procedures when challenging property tax assessments. *The Kent Company v. State Board of Tax Commissioners*, 685 N.E. 2d 1156, 1158 (Ind.

Tax 1997)(“The law is well-settled that a taxpayer challenging a property tax assessment must use the appropriate means of doing so.”); *Williams Industries v. State Board of Tax Commissioners*, 648 N.E. 2d 713, 718 (Ind. Tax 1995)(The legislature has created specific appeal procedures by which to challenge assessments, and taxpayers must comply with the statutory requirements by filing the proper petitions in a timely manner).

21. As previously stated, Ind. Code § 6-1.1-4-13.6(e)(West 1989) provided for a public hearing held by the local officials regarding values contained within the county land order. Once the public hearing was held, the only statutory means for requesting a change or challenging a land order was an administrative appeal to the State Board *by the county and township assessors*. Ind. Code § 6-1.1-4-13.6(g)(West 1989); *Poracky*, 635 N.E. 2d at 238 & 39.
22. Once the county land commission has promulgated the county land orders the issue in an administrative appeal filed by and individual becomes whether the order is properly applied to the individual property.
23. In the case at hand, the Petitioner did not submit specific evidence sufficient to determine that the land order was applied incorrectly. Without such evidence, the burden of proof is not met.
24. No change is made as a result of this issue.

Issue No. 2 - Influence factor for shape and size

25. Land Order values may be adjusted by the application of influence factors. An influence factor is defined in 50 IAC 2.2-4-10 as “a condition peculiar to the lot that dictates an adjustment to the extended value to account for variations from the norm.” Influence factors may be applied for the following conditions: topography; under improved property; excess frontage; shape or size; a misimprovement to the land; restrictions; and other influences not listed

elsewhere.

26. To prevail in an appeal for the application of a negative influence factor, the Petitioner must present both “probative evidence that would support an application of a negative influence factor and a quantification of that influence factor at the administrative level.” *Phelps Dodge v. State Board of Tax Commissioners*, 705 N.E. 2d 1099 (Ind. Tax 1999).
27. In the case at hand, the Petitioner requested an influence factor based on size and shape of the subject parcel.
28. In the case at hand, the Petitioner did not submit specific evidence sufficient to determine a loss of value due to the size and/or shape of the parcel. Without such evidence, the burden of proof is not met.
29. Having failed to meet the necessary burden of proof, the Petitioner’s request for an influence factor is denied. No change is made as a result of this issue.

Issue No. 3 - Obsolescence

30. The Petitioner requests obsolescence be applied to the dwelling on the subject property based on lack of occupancy.
31. In obsolescence claims, the taxpayer has a two-prong burden of proof: (1) the taxpayer has to prove that obsolescence exists, and (2) the taxpayer must quantify it. *Clark v. State Board of Tax Commissioners*, 694 N. E. 2d 1230, 1233 (Ind. Tax 1998).
32. It is incumbent on the taxpayer to establish a link between the evidence and the loss of value due to obsolescence. After all, the taxpayer is the one who best knows his property and it is the taxpayer who seeks to have the assessed value

of his property reduced. *Rotation Products Corp. v. Department of State Revenue*, 690 N.E. 2d 795, 798 (Ind. Tax 1998).

33. In the case at hand, the Petitioner did not submit specific evidence sufficient to determine the existence of obsolescence. Even had Petitioner presented evidence regarding the existence, the Petitioner did not submit specific evidence sufficient to quantify the amount requested. Without such evidence, the burden of proof is not met.
34. Accordingly, the Petitioner has failed to meet his burden of proof regarding obsolescence. This appeal is denied, and no change is made as a result of this issue.

Issue No. 4 – Grade

35. “Grade” is defined as the classification of an improvement based on certain construction specifications and quality of materials and workmanship. 50 IAC 2.2-1-30.
36. Not all residences in the State are average or “C” grade homes. Therefore, grade factors are applied to account for differences in construction specifications and quality of materials and workmanship between the models in the Regulation and the home being assessed. *Clark*, 694 N.E. 2d at 1236, n. 6. The major grade classifications are “A” through “E”. 50 IAC 2.2-7-6 (d)(1). The cost schedules in the Regulation reflect the “C” grade standards of quality and design. The following grade factors (or multipliers) are assigned to each major grade classification:

“A” grade	160%
“B” grade	120%
“C” grade	100%
“D” grade	80%
“E” grade	40%

50 IAC 2.2-7-6 (e).

37. Intermediate grade levels ranging from “A+10” through “E-1” are also provided for in the Regulation to adequately account for quality and design features between major grade classifications. 50 IAC 2.2-7-6 (g).
38. The determination of the proper grade factor requires assessors to make a variety of subjective judgments regarding variations in the quality of materials and workmanship and the quality of style and design. *Mahan v. State Board of Tax Commissioners*, 622 N.E. 2d 1058, 1064 (Ind. Tax 1993). The selected represents a composite judgment of the overall quality and design. *Mahan*, 622 N.E. 2d at 1064; 50 IAC 2.2-7 (f).
39. Subjectivity is used in the grading process. For assessing officials and taxpayers alike, however, the Regulation provides indicators for establishing grade. The text of the Regulation provides indicators for establishing grade. The text of the Regulation (see 50 IAC 2.2-7-6 (d)), the grade specification table (50 IAC 2.2-7-6 (b)), and graded photographs (50 IAC 2.2-7-10) all provide guides for establishing grade.
40. In property tax appeals, the petitioner has the responsibility to provide probative and meaningful evidence to support a claim that the grade factor assigned by the local officials is incorrect. The inability to provide information identifying features and building specifications reveals that a claim for a grade change is purely speculative and is not supported by significant evidence.
41. In the case at hand, the Petitioner did not submit specific evidence sufficient to determine the grade assigned by the local officials is incorrect. Without such evidence, the burden of proof is not met.
42. Consequently, the appeal for change of grade is denied. No change is made as a result of this issue.

Summary of Final Determination

Issue No. 1 – Land Base Rate – No change as a result of this issue.

Issue No. 2 – Influence Factor – No change as a result of this issue.

Issue No. 3 – Obsolescence – No change as a result of this issue.

Issue No. 4 – Grade – No change as a result of this issue.

The above stated findings and conclusions are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this ____ day of _____, 2002.

Chairman, Indiana Board of Tax Review